IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2007

Coram:

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

W.P.No.46429 of 2006

METAL BOX INDIA LIMITED
A COMPANY REGISTERED AND EXISTING
UNDER THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT:
Iind FLOOR, ALLAHABAD BANK BUILDING,
17, PARLIAMENT STREET,
NEW DELHI-110 001
REPRESENTED BY ITS
CHAIRMAN AND MANAGING DIRECTOR .. Petitioner

vs.

1.THE GOVERNMENT OF TAMIL NADU,
REPRESENTED BY
THE SECRETARY,
LABOUR AND EMPLOYMENT DEPARTMENT,
FORT ST.GEORGE,
CHENNAI.

2.METAL BOX COMPANY WORKERS UNION
(REG.No.179/TVR)
REPRESENTED BY ITS PRESIDENT,
NO./25/13, 3RD STREET, JEEVA NAGAR,
NEW WASHERMENPET,
CHENNAI-600 081.

3.METAL BOX COMPANY EMPLOYEES UNION,
(REG.NO.185)
REPRESENTED BY ITS GENERAL SECRETARY
NO.185 A, THIAGARAJAPURAM THANGAL,
THIRUVOTTIYUR,
CHENNAI-600 019 .. RESPONDENTS

PRAYER: The writ petition is filed under Article 226 of the Constitution of India praying for the issuance of the writ of certiorari calling for the records of the proceedings of the first respondent in their reference made to the Industrial Tribunal vide G.O.(D) No.427 dated 2.6.2006; and quash the said G.O.(D).No.427 dated 2.6.2006, the reference made therein and all further proceedings pursuant thereto before the Industrial Tribunal.

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For Petitioner : Mr.T.V.Ramanujam,
Senior counsel M/s B.F.S. Legal

For Respondent-1 : Mr.P.Rajakalifulla
Govt.Pleader

For Respondent-3 : Mr.K.M.Ramesh

(ORDER OF THE COURT WAS MADE BY V.RAMASUBRAMANIAN, J.)

The company Metal Box India Limited, whose management is the petitioner in the present writ petition, was declared as a sick unit by the Board for Industrial and Financial Reconstruction on 27.5.1988 and an Operating Agency was appointed. But before the finalisation of a Scheme, the Chennai Unit of the company was reopened on 24.4.1989 and was later locked out on 11.10.1992.

2. A Scheme prepared by the Operating Agency on 3.10.2000, came to be approved by the Appellate Authority for Industrial and Financial Reconstruction on 15.4.2002. But one of the Trade Unions of the workers of the company entered into a settlement with the management on 28.11.2005, under Section 18 (1) of the Industrial Disputes Act, 1947. On the said settlement, the Joint Commissioner of Labour initiated talks, but another Union challenged the initiation of proceedings, by way of a writ petition in W.P.No.1002 of 2006.

3. On 18.1.2006, the settlement received the seal of approval from the Joint Commissioner of Labour and came to be treated as a settlement under Section 12 (3) of the Act. As per the settlement, the workers agreed to take compensation and surrender their claim for or lien on employment.

4. The said settlement was challenged by the other Union in W.P.No.1787 of 2006. Pending the writ petition, the learned single Judge granted interim stay and the same was challenged in writ appeals W.A.Nos.415 and 416 of 2006.

5. The writ appeals were allowed by a common order dated 27.4.2006, vacating the interim stay granted by the learned single Judge and disposing of the writ petition, with a direction to the Government to refer the dispute to the Industrial Tribunal.

6. In pursuance of the said order, the Government issued G.O. (D) No.427, Labour and Employment (A2) Department, dated 2.6.2006 referring the following questions for adjudication by the Industrial Tribunal:-

> "1. Whether the claim of the Metal Box Union (Regd. No.179/TVR) that the settlement signed under Section 12 (3) of the Industrial Disputes Act, 1947 Dated 18.1.2006 by the Joint Commissioner of Labour, Chennai is violative of provisions of Industrial

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Disputes Act, 1947 and detrimental to the interest of workmen and therefore the settlement dated 18.1.2006 should be set aside is justified?

2. If not, to what relief the workers are entitled?"

7. Aggrieved by the terms of the reference, the management has come up with the present writ petition, contending that the terms of reference are not in accordance with the spirit of the order passed by the Division Bench in W.A.Nos.415 and 416 of 2006 dated 27.4.2006.

8. We have heard Mr.T.V.Ramanujun, learned Senior Counsel for the petitioner, Mr.P.Rajakalifulla, learned Government Pleader for the first respondent and Mr.K.M.Ramesh, learned counsel for the third respondent.

9. As seen from the affidavit in support of the writ petition, the grievance of the writ petitioner is not against the reference as such. It is only with respect to the terms of the reference and the manner in which the terms of the reference are worded.

10. The first issue referred to the Industrial Tribunal, by the impugned Government Order is as to whether the settlement under Section 12 (3) is violative of the provisions of the Industrial Disputes Act and detrimental to the interests of the workmen and whether the claim of one Union for setting aside the settlement is justified or not. The primary objection of the management to the framing of the issue is that it does not encompass within itself, the background in which the settlement was brought forth. The next objection is that if allowed to stand as such, the reference places the onus upon the parties to the settlement to justify the settlement, whereas the onus should be upon the party who challenges the settlement, to prove that it is violative of the law.

11. We have carefully considered the submissions. In W.A.Nos.415 and 416 of 2006, the Union opposing the settlement under Section 12 (3) raised three objections viz.,

(i) that the Joint Commissioner of Labour did not independently apply his mind to the fairness and reasonableness of the settlement and did not assist in the arrival of the settlement;

(ii) that the provisions of Section 25 (O) of the Industrial Disputes Act, were not complied with; and

(iii) that the Union was not given an opportunity.

12. In answer to the first objection, the Division Bench held in paragraph-12 of its judgment dated 18.4.2006 as follows:-

"Therefore from the records, it is not possible for us to arrive at a conclusion that the fourth respondent did not independently apply his mind to the fairness and reasonableness of the settlement or that he denied opportunity to the Unions, the interest of whose members had been taken into account."

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13. The second objection relating to Section 25 (O) was not sustained by the Division Bench. With regard to the third objection, the Division Bench held in paragraph-16 of its judgment as follows:-

> "It is not possible for us to come to the conclusion from these materials that there was no fair opportunity to the first respondent-Union or that there was no independent application of mind by the fourth respondent on the impugned settlement. Perhaps, the first respondent-Union may be able to establish the same before the Tribunal, where the factual controversies can be laid to rest ....."

14. From the findings recorded by the Division Bench as extracted above, it is clear that the dispute was directed to be referred for adjudication to the Industrial Tribunal, for the purpose of resolving certain factual controversies, viz., there was application of mind on the part of the Joint Commissioner of Labour and whether a fair opportunity was given to the contesting Union, before the Conciliation Officer put his seal of approval on the settlement. Therefore, the terms of reference could have been better worded, so as to avoid any confusion or controversy. In simple terms, the Government could have framed the issue in such a manner (i) as to whether the settlement under Section 12 (3) was vitiated by non application of mind on the part of the Conciliation Officer and by the failure to provide fair opportunity to the opposing Union and (ii) as to what relief the workers are entitled, in the event of the settlement being found liable to be set aside, on either of those grounds.

15. Since the reference as framed, is not happily worded and has given rise to a controversy even while attempting to resolve another, the impugned Government Order is liable to be modified. Accordingly, the writ petition is allowed and the terms of reference to the Tribunal shall stand modified as follows:-

> "(1) Whether the settlement under Section 12 (3) is vitiated by non application of mind on the part of the Conciliation Officer and by his failure to provide fair opportunity to the opposing Union and is liable to be set aside?.
>
> (2) If so, to what relief the Members of the opposing Union are entitled, in the light of the Scheme framed under the Sick Industrial Companies (Special Provisions) Act?".

The Industrial Tribunal shall dispose of the dispute within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

Svn

To

1.THE SECRETARY,
THE GOVERNMENT OF TAMIL NADU,
LABOUR AND EMPLOYMENT DEPARTMENT,
FORT ST. GEORGE, CHENNAI.

1 cc to Mr. K.M. Ramesh, advocate SR.65926.

WP No.46429 of 2006

CK(CO)
JJM(30/04/08)

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